

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROSS EUGENIO VARELA,

Plaintiff,

vs.

No. CV 17-0317 SMV

**NANCY A. BERRYHILL,
Acting Commissioner of Social Security,**

Defendant.

**ORDER AWARDING ATTORNEY FEES PURSUANT TO
THE EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. § 2412(d)**

THIS MATTER is before the Court on the Stipulated Motion for Award of Attorney Fees under the Equal Access to Justice Act, (Doc. 29), filed June 25, 2018, in which the parties stipulate to awarding Plaintiff EAJA fees in the amount of \$5,000.00.

IT IS THEREFORE ORDERED that Plaintiff be awarded \$5,000.00 in attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). See *Astrue v. Ratliff*, 560 U.S. 586, 591–93 (2010) (providing EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED that if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b), Section 206(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED.



**STEPHAN M. VIDMAR
United States Magistrate Judge
Presiding by Consent**

Submitted by:

s/ Francesca J. MacDowell
Francesca J. MacDowell
Attorney for Plaintiff

**Approved by email on
June 25, 2018 by:**

Kathryn C. Bostwick, Special AUSA
Attorney for Commissioner